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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/407,124	09/27/1999	WILLIAM D. KENNEDY	072755-020100/US	2321
33717 7590 12/03/2008 GREENBERG TRAURIG LLP (L.A.) 2450 COLORADO AVENUE, SUITE 400E INTELLECTUAL PROPERTY DEPARTMENT SANTA MONICA, CA 90404				
EXAMINER ALVAREZ, RAQUEL				
ART UNIT 3688		PAPER NUMBER		
MAIL DATE 12/03/2008		DELIVERY MODE PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/407,124

Applicant(s)

KENNEDY, WILLIAM D.

Examiner

Raquel Alvarez

Art Unit

3688

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 September 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 22, 23, 29-35, 56, 57 and 59-61 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 22-23, 29-35, 56, 57 and 59-61 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. This office action is in response to communication filed on 9/19/2008.
2. Claims 22-23, 29-35, 56-57 and 59-61 are presented for examination.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 22-23, 29-35 and 54-61 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson et al. (5,712,989 hereinafter Johnson). in view of Official Notice.

With respect to claims 22, 29-32, and 54, 58, 61 Johnson teaches an electronic commerce system. A host (Figure 1, item 10) adapted for two-way communication with a distributor offering an inventory of merchandise comprising discrete items (Figure 1, 52), said host adapted to issue order to the plurality of distributors in response to purchase requests received (see figure 1); and

A store builder adapted suitable adapted to, in response to a request from a store owner, create a store managed by the host for the store owner, said store providing a consumer with access, via said distributors, to at least one merchandise item selected from the inventory (Figures 1, 2B and 3); the store is customized by store name (see table V).

Johnson teaches on col. 4, lines 1-3 that "Distributor may elect to stock in Distributor warehouse 30 some or **all the items for a particular vendor** of either type 38 or type 39"(inventory of items). Johnson doesn't specifically teach a plurality of distributors. Official Notice is taken that it is old and well known to include more than one distributor in order to allow more than one distributor to mark, describe, record and report the items sold. It would have been obvious to a person of ordinary skill in the art at the time of Applicant's invention to have included a plurality of distributors in order to achieve the above mentioned advantage.

With respect to the host being operated by a host owner which is a different entity that the distributor. Official Notice is taken that it is old and well known in marketing and the like for entities to give an assignment to (a person or entity) or assign a task to (a person or entity) in order to delegate responsibilities to others. It would have been obvious to have included different entities operating the promoting/selling of the goods (i.e. host in Johnson) from the entity that stocks and ships the goods (i.e. distributor warehouse) in order to obtain the above mentioned advantage.

Claims 23, 33-35, 55 further recite a store URL and multiple store each with a different URL. Official notice is taken that is old and well known to use an URL to locate a site on the World Wide Web. Some stores have multiple URL's for each location in order to easily identify of their location. It would have been obvious to a person of ordinary skill in the art at the time of Applicant's invention to have included a store URL

and multiple store each with a different URL in order to obtain the above mentioned advantages.

With respect to claim 56, Johnson further teaches the host owner receives payment of purchase from a consumer (i.e. host computer 10 prices and processes payments at step 268).

Claim 57 further recites the host adapted to make a payment to one of the distributors from the purchase price and to retain at least a portion of the purchase price as the host owner's profit. Official Notice is taken that it is old and well known in the case where the duties and responsibilities are shared and delegated among different entities as explained above in the rejection of claims 22, 29-32, 35 and 54, 58 to divide or make payments to all the entities involved in order for all the parties to get paid for their duties or services. It would have been obvious to a person of ordinary skill in the art at the time of Applicant's invention to have included the host adapted to make a payment to one of the distributors from the purchase price and to retain at least a portion of the purchase price as the host owner's profit in order to obtain the above mentioned advantage.

With respect to claim 59, Johnson further recites a first store (i.e. vendor 37) and a second store (i.e. vendor 38) offering products for sale by e-commerce.

With respect to claim 60 in addition to the limitations previously addressed above in the rejection of claims 23, 33-35, 55, it further recites a plurality of store types for selection in building the store and receiving from the store owner an identification of the plurality of products to be offered. Johnson teaches the vendors 37 and 38 offering the type of product offered based on the store specialty and store type 37 or 38 and vendor part numbers and vendor codes (col. 31, lines 60-65).

Response to Arguments

5. Applicant argues that that table V is created by the customer and not created by store owner. The Examiner disagrees with Applicant because on col. 10, lines 50-52 it states that the customer creates a cross reference to the table but it doesn't state that the table itself is created by the customer. In Col. 10, lines 47-50, Johnson discloses identifying the third party by number and name and the vendor's part, the vendor's offered price. This table is used by the distributor and the customer cross references the table to obtain vendor's information. It also discloses that the data screen 80 of table V will be automatically filled in using the data associated with stock number (of the vendor). Johnson further teaches that this information is transferred to the host and the customer, the Examiner wants to point out that table V would have to be created by the vendors 37 and 38 in order to transfer and share the information with the customer, distributor and host. In order for the system to obtain the particular vendor's information and particular vendor number, vendor's catalog number these information would have to be obtained by the vendors.

6. Applicant argues that Johnson teaches vendors 37 and 38 as only being suppliers. The Examiner wants to point out that the term suppliers as defined by Google.com includes contactors, sub-contactors, **vendors**, developers, **sellers** or any other term to identify the source.

7. Applicant argues that Johnson doesn't teach vendors 37 or 38 is a store owner as Johnson teaches that the distributor enters the sale transaction with the customer. The Examiner wants to point out that the claims call only for "said store providing a consumer with access, via said distributors, to at least one merchandise item selected from the inventory" and therefore, Johnson teaches the claim limitations because Johnson teaches the customer (40) via a host (10), accessing a distributor's inventory (30) of merchandise, the merchandises being items offered/supplied by vendors 37/38. The claims don't call for a sale transaction being performed directly between the store owner and the customer.

8. Applicant argues that Johnson doesn't teach any store owner that makes a request to create a store. The Examiner disagrees with Applicant because vendors 37/38 have their items for sale using host 10 and distributor warehouse 30, in order for vendors 37 or 38 to be able to supply the items that are being supplied to distributor warehouse 30, a creation of the store or location has to be created or requested in order for vendors 37 or 38 to supply their items for sale via distributor warehouse 30.

9. With respect to the Official Notices taken, while applicant may challenge the examiner's use of Official Notice, applicant needs to provide a proper challenge that

would at least cast reasonable doubt on the fact taken notice of. See MPEP 2144.03 where In re Boon is mentioned.

Conclusion

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Point of contact

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Raquel Alvarez whose telephone number is (571)272-6715. The examiner can normally be reached on 9:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James w. Myhre can be reached on (571)272-6722. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Raquel Alvarez/
Primary Examiner, Art Unit 3688

Raquel Alvarez
Primary Examiner
Art Unit 3688

R.A.
12/1/2008